

Exhibit H.

EXPERTS' REPORT

**Berks Landfill Site
Sinking Spring, Pennsylvania**

The Liberty Mutual Insurance Company

v.

The Black & Decker Corporation, et al.

U.S.D.C., D. Mass., C.A. No. 96-10804-DPW

April 30, 1998

Prepared for:

Liberty Mutual Insurance Company

Prepared by:

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ROUX

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1.0 INTRODUCTION

This Experts' Report regarding the Berks Landfill Site has been prepared by Dennis Colton, Principal Hydrogeologist and William Fisher, P.E., Senior Engineer of Roux Associates, Inc. This report was prepared for Liberty Mutual Insurance Company in the action *Liberty Mutual Insurance Company v. The Black & Decker Corporation, et al.*

Opinions reached in this report are based on the following:

- Reports, maps, correspondence, and other documents provided by Liberty Mutual's counsel;
- Publicly available reports, maps, and other documents;
- Mr. Colton's professional experience in hydrogeology and the investigation of contaminated sites; and
- Mr. Fisher's professional experience in engineering and the remediation of contaminated sites nationwide.

Mr. Colton's opinions are provided in Section 2.0. Mr. Fisher's opinions are provided in Section 3.0. Mr. Colton's and Mr. Fisher's professional profiles are provided in Appendix A.

2.0 MR. COLTON'S OPINIONS

Opinion 1: The environmental harm at the Berks Landfill Site consists of contamination of soil and ground water.

Bases for Opinion 1.

- The Berks Landfill (Site) is located in Sinking Spring, Spring Township, Berks County, Pennsylvania (Figure 1). The Site consists of a closed municipal landfill and adjacent undeveloped property. Historically, landfilling operations occurred at the Site from 1950 until 1986. Numerous entities used the landfill to dispose of their wastes. Prior to landfilling activities, the Site was used for mining.
- As shown in Figure 2, the Site consists of a facilities area (i.e., maintenance building, office, weigh station), an equipment repair area, surface impoundment area (lagoons), two landfill areas (western and eastern landfills), a demolition waste disposal area, and a borrow area. Landfilling operations were conducted south of Wheatfield Road and covered an area of 58 acres. The eastern landfill covers approximately 48 acres of the Site and received municipal refuse and demolition debris. The western landfill received municipal waste and an estimated 5,000 cubic yards of stabilized alkali sludge. The sludges contained heavy metal constituents such as barium, cadmium, and chromium.
- In May 1975, the Pennsylvania Department of Environmental Resources (PADER) issued a permit for solid waste disposal and/or processing to the Berks Landfill Corporation. In September 1979, the United States Environmental Protection Agency (USEPA) conducted a preliminary assessment of the landfill and the results indicated that the landfill did not have a proper leachate collection system. As a result, their permit was subsequently suspended. In 1984 a Permit Amendment Investigation was conducted by PADER. On January 9, 1984 PADER Permit No. 100347 was amended requiring a limited hydrogeologic investigation be conducted. Twelve monitoring wells, including several off-site private wells, were sampled. The results indicated on-site degradation of ground water, but the private wells were not contaminated. The investigation report also indicated that additional monitoring wells would be necessary to define the extent of ground-water degradation. In September 1985, contractors for the USEPA conducted an inspection of the Berks Landfill and collected soil and ground-water samples. The sample results revealed impacts to Site soil, ground water, and one private well.
- In 1986, PADER executed a Consent Order and Agreement with Berks Sanitary Landfill and Berks Landfill Corporation requiring them to develop and submit a closure plan for the landfill, and closure was to take place no later than October 1986. On October 2, 1989, the Site was added to the USEPA National Priorities List (NPL). On August 3, 1990, the USEPA issued a Unilateral Order to perform a Removal Action at the Site.

- In 1987, in order to meet the requirements of the Consent Order issued by PADER, Peffer Geotechnical Corporation was retained by Berks Landfill Corporation and Berks Sanitary Landfill Inc. to conduct a detailed hydrogeologic investigation at the Site. The results of the investigation indicated the presence of elevated concentrations of volatile organic compounds (VOCs) at two Site areas, the western and eastern landfills. This investigation also concluded that public water supply wells within a 1-mile radius of the Site were hydrogeologically isolated from the Site because of the presence of an aquitard.
- Pursuant to the findings of the Peffer investigation above, a USEPA subcontractor (NUS) conducted a limited removal site assessment investigation on July 24, 1987. Samples were collected from the lined lagoons and from seepage in the southern portion of the Site. In addition, a preliminary risk assessment was conducted based on the detection of various leachate constituents in on-site wells and off-site private residential wells. On the basis of these results, the Site was placed on the USEPA NPL on October 2, 1989.
- In 1990, PADER sampled seven residential wells along Wheatfield Road and low concentrations of VOCs were detected in two of the wells. The same contaminants were found in ground water onsite.
- On July 5, 1991, the USEPA and the Berks Landfill Respondents (Sonoco Fibre Drum, Inc., Carpenter Technology Corporation, and The Glidden Company) entered into an Administrative Order on Consent to conduct a Remedial Investigation/Feasibility Study (RI/FS) at the Site.
- Two separate ground-water contamination plumes have been identified underlying the Site: one located in the vicinity of the eastern landfill and one in the vicinity of the western landfill. It is likely that shallow Site ground water discharges to the unnamed tributaries of Cacoosing Creek. The contaminants of concern include vinyl chloride, trans-1,2-dichloroethene, trichloroethene, methylene chloride, acetone, benzene, 4-methyl-2-pentanone, toluene, 2-hexanone, xylenes, ethylbenzene, 2-butanone, chlorobenzene, 1,1,1-trichloroethane, and tetrachloroethylene.

Opinion 1 References:

- Golder Associates Inc.; August 1991. Remedial Investigation/Feasibility Study Draft Work Plan, Volume One, Revision #0.
- NUS Corporation Superfund Division; September 22, 1986. Site Inspection of Berks Landfill.
- United States Department of Health and Human Services, Agency for Toxic Substances and Disease Registry; August 10, 1990. Preliminary Health Assessment for Berks Landfill.
- United States Environmental Protection Agency; May 1991. Administrative Order on Consent for Sonoco Fibre Drum, Inc., Carpenter Technology Corporation and The Glidden Company to conduct a Remedial Investigation/Feasibility Study.

Opinion 2: The documentation provided for review in this case did not demonstrate a connection between Black & Decker's waste and environmental harm at the Berks Landfill Site.

Bases for Opinion 2.

- Black & Decker is recognized as a third party defendant in connection with the Douglasville site, which is located about 15 miles east of the Berks Landfill Site. The Douglasville site was at one time owned and operated by the same owner as the Berks Landfill Site, Mr. Sebastian Lambardo. Black & Decker's alleged link to the Berks Landfill site is based on a review of a "Berks Associates Site Transactional Database" and letters prepared by Black & Decker's counsel, Swidler & Berlin, which indicate A&A Waste Oil Inc. was contracted by Black & Decker to transport and dispose waste oils from a Black & Decker facility(s) to the site. There is nothing in the documentation linking Black & Decker to the Berks Landfill Site.
- It was alleged that A&A Waste Oil, Inc. transported waste oil to the Berks Landfill in 1973, and some portion of the waste shipment may have originated at Black & Decker's facility in Hampstead, Maryland. Therefore, the earliest that any alleged contamination could have occurred would have been after 1973 if waste had been shipped to the Site.

Opinion 2 References:

Swidler & Berlin; December 1, 1992. Letter to Riesenburger & Kizer.

Swidler & Berlin; December 2, 1992. Letter to Graham & James.

Swidler & Berlin; December 2, 1992. Letter to Pepper, Hamilton & Scheetz.

Tier II Appendix to Defendants' Responses to Plaintiff's First Set of Interrogatories to the Defendants.

Opinion 3: Discharges of pollutants at the Berks Landfill Site were gradual and protracted.

Bases for Opinion 3.

- The impacted on-site and off-site areas are the result of a gradual and protracted release of contaminants from the Site leachate collection lagoons and landfill areas. Interview summaries from several former Berks Landfill employees indicate that the release of contaminants was the result of routine facility operations from the 1950s through 1986.

Opinion 3 References:

Golder Associates Inc.; August 1991. Remedial Investigation/Feasibility Study Draft Work Plan, Volume One, Revision #0.

NUS Corporation Superfund Division; September 22, 1986. Site Inspection of Berks Landfill.

United States Department of Health and Human Services, Agency for Toxic Substances and Disease Registry; August 10, 1990. Preliminary Health Assessment for Berks Landfill.

United States Environmental Protection Agency; February 5, 1990. Interview of Mr. Walter Wink.

United States Environmental Protection Agency; April 25, 1990. Interview with Mr. Robert McKinney.

United States Environmental Protection Agency; June 26, 1991. Administrative Order on Consent for Remedial Investigation/Feasibility Study, Docket No. III-90-32-DC.

3.0 MR. FISHER'S OPINIONS

Opinion 1: Environmental activities completed and/or proposed at the Berks Landfill Site, including capping, installation of a leachate collection and interceptor system, and installation, operation and maintenance of a pumping and treatment system for the on-site lagoons, as well as long-term ground-water, surface-water and gas monitoring, are not considered a part of Site cleanup.

Bases for Opinion 1.

- A letter from Sinkler & Boyd indicates the elements of a work plan proposed for the Site to include a clay cap and/or topsoil cap and vegetation at an eroded area.
- The Draft Work Plan indicates that as permitted by PADER Permit No. 100347, the footprint of Berks Landfill was to have consisted of a compacted low-permeability subbase liner. Leachate collection within the property boundary was to have been completed, in part, by flow off of the soil subbase liner and, in part, by collection and interception in underdrains. Perimeter interceptor drains downgradient of the eastern landfill were also to have been laid down to capture potential off-site migration of the leachate. The leachate lagoons were initially lined with sprayed asphalt. Recognition of asphalt liner deterioration led to the installation of synthetic membrane liners within the lagoons.
- The Draft Work Plan states that response activities, as specified in the Administrative Order on Consent, were to prepare:
 - “a plan for the construction of an 8-foot high fence of sufficient strength, durability and design to restrict access to the maximum extent practicable by unauthorized person to the 48 acre area addressed by the order;
 - a plan to cap with an adequate volume of uncontaminated clay and/or topsoil and to revegetate the heavily eroded area on the south side of the site...;
 - a plan for the installation, operation, and maintenance of a pumping and treatment system for the on-site lagoons. The pumping and treatment system shall be capable of reliable continued operation for a period of up to five years and shall be designed and implemented in a manner sufficient to maintain adequate freeboard in the lagoons so that the substances in the lagoons do not overflow during any rainfall events, or due to any other reason...;
 - a plan for continued operation and maintenance of the pumping and treatment system until the final remedy is implemented.”

Opinion 1 References:

Golder Associates Inc.; August 1991. Remedial Investigation/Feasibility Study Draft Work Plan, Volume One, Revision #0.

Sinkler & Boyd; August 10, 1990. Letter to USEPA.

Opinion 2: There were no aspects of remediation associated with ground-water cleanup indicated in the documents reviewed.

Bases for Opinion 2.

- The Preliminary Health Assessment states "Recommendations have been made to inform present or future users of water from the previously contaminated residential well of the potential health implications from drinking the water. If data become available suggesting that human exposure to significant levels of hazardous substances is currently occurring or has occurred in the past, ATSDR will reevaluate this site for any indicated follow-up."
- The Draft Work Plan states "It is notable however that while downgradient private wells do exist, all residences are served by a public water supply which provides a main drinking water source."

Opinion 2 References:

Golder Associates Inc.; August 1991. Remedial Investigation/Feasibility Study Draft Work Plan, Volume One, Revision #0.

United States Department of Health and Human Services, Agency for Toxic Substances and Disease Registry; August 10, 1990. Preliminary Health Assessment for Berks Landfill.

Opinion 3: The capping, installation of a leachate collection and interceptor system, and installation, operation and maintenance of a pumping and treatment system for the on-site lagoons, as well as long-term ground-water, surface-water and gas monitoring, are considered to be ordinary operational and closure requirements of landfill operations.

Bases for Opinion 3.

- The Pennsylvania Solid Waste Management Act, Act 241, enacted in August 1968, regulated solid waste storage, collection, transportation, processing and disposal systems and required permits for the operation of processing and disposal systems.
- The 1972 USEPA document titled "Sanitary Landfill Design and Operation" discussed the needs for controlling ground-water pollution and the movement of decomposition gases, fencing, and control of surface water.

- The 1974 USEPA Guidelines on Thermal Processing and Land Disposal of Solid Wastes (40 CFR Part 241) provides recommended procedures for landfill operations. These procedures include that final cover (not less than two feet) be applied on each area as it is completed. It further states that access should be controlled by established roadways only, and records should be kept of qualitative and quantitative impact using leachate and gas sampling and analyses upstream and downstream of the site.
- Pennsylvania Regulations Section 273.322 require submission of a closure plan under 273.192 which requires descriptions of post-closure measures relating to:
 - (i) water control monitoring;
 - (ii) gas control and monitoring;
 - (iii) leachate collection and treatment;
 - (iv) erosion and sedimentation control;
 - (v) revegetation and regrading, including maintenance of the final cover; and
 - (vi) access control.
- In May 1980, the USEPA promulgated Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities, Subpart N - Landfills (40 CFR Part 265.300) which provides closure and post-closure requirements. Among these closure requirements are final cover placement, control of ground water, surface water, and air pollution migration as specified in the closure plan. Post-closure care requirements include: maintenance of the function and integrity of the final cover; maintenance and monitoring of the leachate collection, removal, and treatment system, and the gas collection control system; and restricting access to the landfill.
- The Draft Work Plan states that "As permitted by PADER Permit No. 100347, the footprint of Berks Landfill was to have consisted of a compacted low-permeability subbase liner. Leachate collection within the property boundary was to have been accomplished in part, by flow off of the soil subbase liner and in part, by collection and interception in underdrains."
- The Draft Work Plan states that "The landfill was operated as stated above as a municipal landfill prior to 1970. On January 16, 1970 an application for a permit for 'Solid Waste Disposal or Processing Facilities' was filed with the Pennsylvania Department of Environmental Resources (PADER), by Berks Landfill Corporation. PADER issued Permit No. 100347 to the Berks Landfill Corporation on May 27, 1975, along with a 'Water Quality Management Permit' (No. 0673203) approving an industrial waste treatment facility."

- The Administrative Order on Consent states that Permit No. 100347 required “ the expansion of the leachate collection system, a detailed groundwater study, installation of monitoring wells to monitor deep groundwater flow quarterly, and annual chemical analyses for each monitoring point.”
- The Administrative Order on Consent states that “On June 29, 1979, a PADER Module 1 permit application (i.e., a request for approval from the state to treat, store, or dispose of a hazardous or residual waste as a result of the Resource, Conservation and Recovery Act of 1976) for disposal of hazardous waste at the Landfill was approved by the PADER as Permit No. 100347.”
- The Draft Work Plan states that “On January 9, 1984, Solid Waste Permit No. 100347 was amended, requiring the installation of additional monitoring wells at the Site, by now called Berks Sanitary Landfill Inc.”
- The Administrative Order on Consent states that “On August 6, 1986, the PADER executed a Consent Order and Agreement (CO&A) with Berks Sanitary Landfill, Inc. and Berks Landfill Corporation requiring them to develop and submit a closure plan for the landfill including a design for a new perimeter leachate collection system for the eastern portion of the landfill and a provision for additional filling to bring the landfill into conformance with PADER regulations regarding slopes, benching, surface water and management, and a schedule for closure no later than October 1, 1986.” (The CO&A also required a ground-water investigation, if necessary, and abatement program and other improvements to the landfill.)
- The Administrative Order on Consent states that “On August 3, 1990, the EPA issued a Unilateral Order to Berks Sanitary Landfill, Inc., This action includes development of a Site Health and Safety Plan, the construction of a fence surrounding the eastern portion of the Landfill, a plan to cap the heavily eroded area on the south side of the Site, and a plan for the installation and operation and maintenance of a pumping and treatment system for the on-site lagoons until the final remedy is implemented.”

Opinion 3 References:

- Golder Associates Inc.; August 1991. Remedial Investigation/Feasibility Study Draft Work Plan, Volume One, Revision #0.
- United States Environmental Protection Agency; May 1980. Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities.
- United States Environmental Protection Agency; June 26, 1991. Administrative Order on Consent for Remedial Investigation/Feasibility Study, Docket No. III-90-32-DC.

Opinion 4: No elements of the Site remediation are associated with off-site cleanup.

Basis for Opinion 4.

- The Administrative Order on Consent states that "On August 3, 1990, the EPA issued a Unilateral Order to Berks Sanitary Landfill, Inc., This action includes development of a Site Health and Safety Plan, the construction of a fence surrounding the eastern portion of the Landfill, a plan to cap the heavily eroded area on the south side of the Site, and a plan for the installation and operation and maintenance of a pumping and treatment system for the on-site lagoons until the final remedy is implemented."

Opinion 4 Reference:

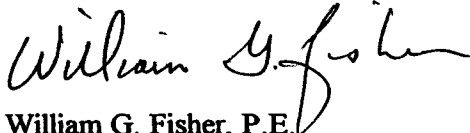
United States Environmental Protection Agency; June 26, 1991. Administrative Order on Consent for Remedial Investigation/Feasibility Study, Docket No. III-90-32-DC.

Respectfully submitted,

ROUX ASSOCIATES, INC.

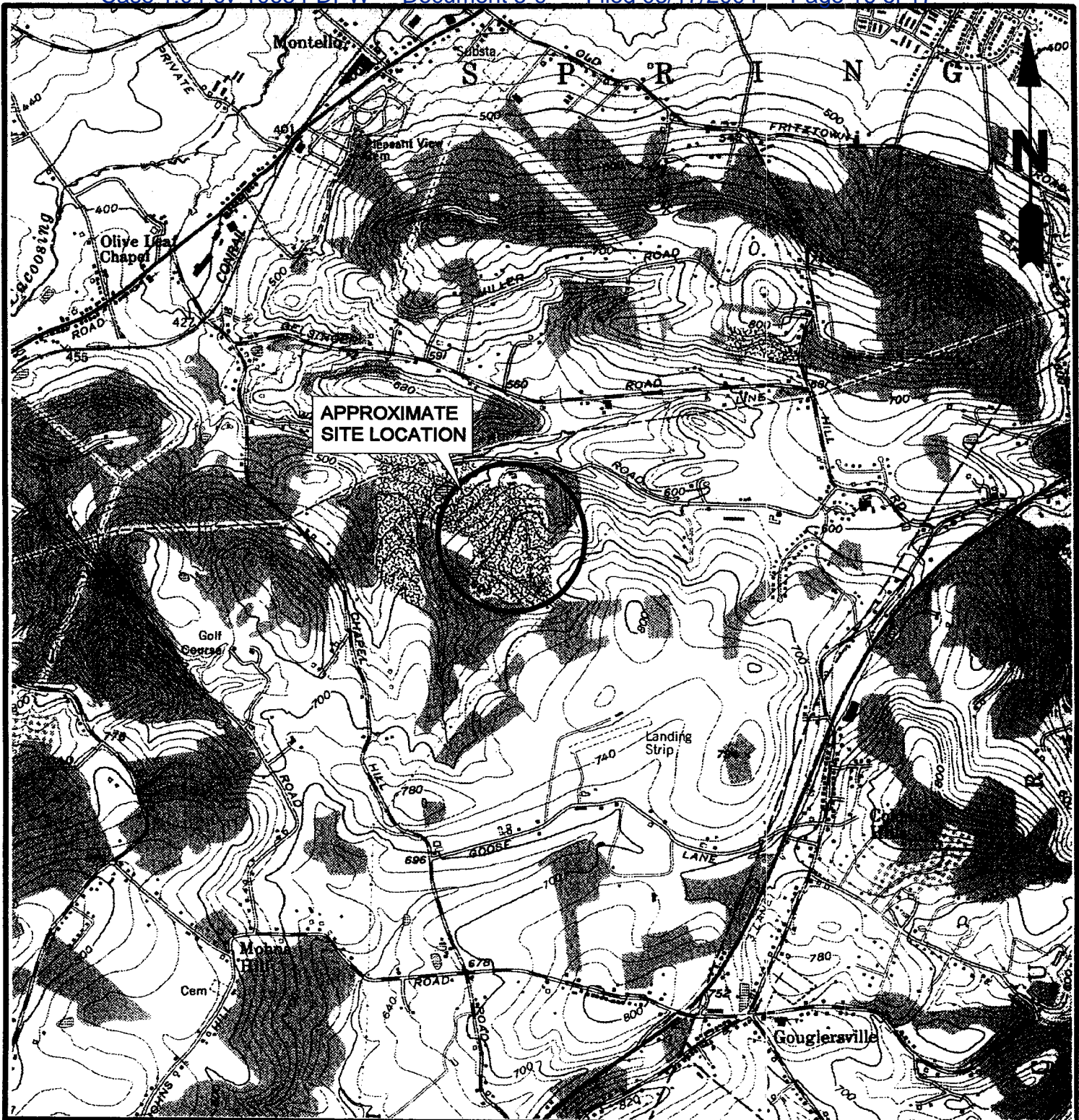
Handwritten signature of Dennis Colton in cursive script.

Dennis Colton, P.G.
Principal Hydrogeologist

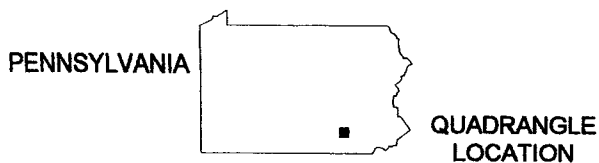
Handwritten signature of William G. Fisher in cursive script.

William G. Fisher, P.E.
Senior Engineer

FIGURES



SOURCE:
USGS SINKING SPRING, PENNSYLVANIA
QUADRANGLE 7.5 MINUTE SERIES (TOPOGRAPHIC 1987)



Title:

SITE LOCATION MAP

BERKS LANDFILL SITE
BERKS COUNTY, PENNSYLVANIA

Prepared For:

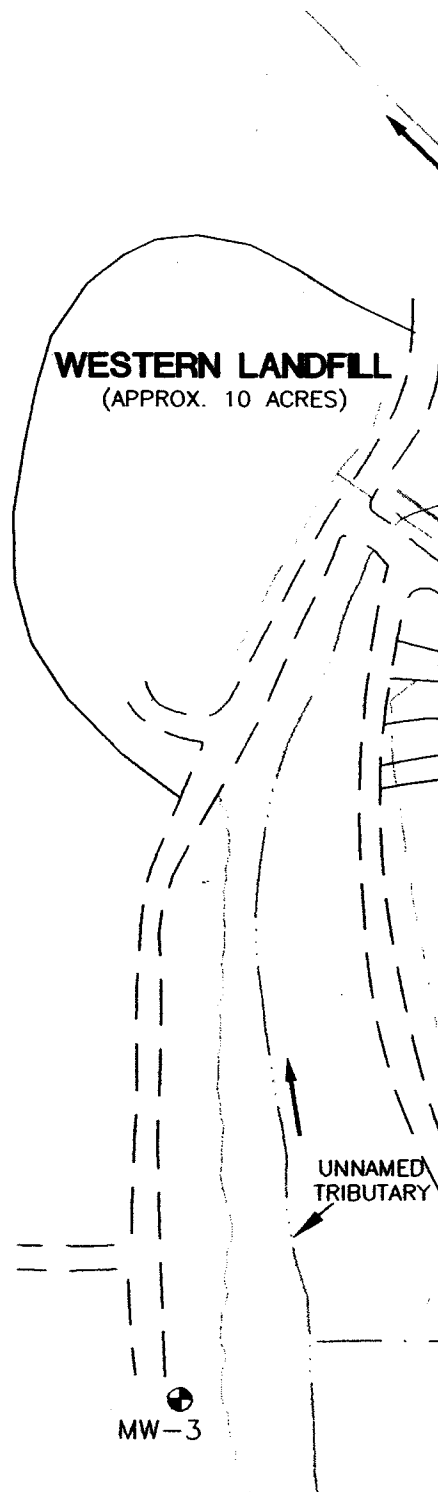
WARNER & STACKPOLE

ROUX
ROUX ASSOCIATES INC
Environmental Consulting
& Management

Compiled by:	A.J.M.	Date:	12/97
Prepared by:	R.R.	Scale:	1"=2000'
Project Mgr:	M.S.	Status:	Final
File No:	W0212201.WOR	Project:	44802Y

FIGURE

1



LEGEND

- MW-1
EXISTING MONITORING WELL
- LEACHATE COLLECTION SYSTEM
- LEACHATE COLLECTION SYSTEM FLOW DIRECTION
- UNNAMED TRIBUTARY
- DRAINAGE
- TRIBUTARY AND DRAINAGE FLOW DIRECTION
- CONTOUR LINES
- ACCESS ROAD

SOURCES: NUS CORPORATION; 1986. SITE INSPECTION OF BERKS LANDFILL.
GOLDER ASSOCIATES; AUGUST 3, 1991.
FIGURE 2 "PARCEL MAP" BATES NO: LM 0069242

SITE PLAN

BERKS LANDFILL SITE
BERKS COUNTY, PENNSYLVANIA

Prepared For:

WARNER & STACKPOLE

ROUX ROUX ASSOCIATES INC Environmental Consulting & Management	Compiled by: A.M.	Date: 3/98	FIGURE 2
	Prepared by: R.K.	Scale: NTS	
	Project Mgr: M.S.	Status: FINAL	
	File No: W0210102	Project: 44502Y	